

PT 99-13

Tax: PROPERTY TAX
Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

McLEAN COUNTY HISTORICAL SOCIETY)	A.H. Docket # 98-PT-0056
Applicant)	
)	Docket # 96-57-26
)	Parcel Index #(43) 21-03-403-007
)	
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe
OF THE STATE OF ILLINOIS)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: John N. Stevens, Attorney at Law, for McLean County Historical Society.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Springfield, Illinois, on October 22, 1998, to determine whether or not McLean County Parcel Index No. (43) 21-03-403-007 qualified for exemption during the 1996 assessment year.

Mary Turner, Coordinator for the Illinois Association of Museums; John Meek, Past President, and Greg Koos, Executive Director for McLean County Historical Society, (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1996 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether this parcel was used by the applicant for exempt purposes during the 1996 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during a portion of the 1996 assessment year. It

is also determined that the applicant is not a charitable organization. Finally, it is determined that the applicant did not use the property for charitable purposes during the 1996 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that McLean County Parcel Index No. (43) 21-03-403-007 did not qualify for a property tax exemption for the 1996 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 13)

2. On April 17, 1997, the Department received a property tax exemption application from the McLean County Board of Review for Permanent Parcel Index No. (43) 21-03-403-007. The applicant had submitted the request, and the board recommended granting the exemption for the 1996 assessment year. The Department assigned Docket No. 96-57-26 to the application. (Dept. Grp. Ex. No. 2)

3. On July 16, 1998, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Springfield, Illinois, on October 22, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant was founded in 1892. It is the second oldest historical society in Illinois. It opened its first museum in 1904. Presently, it operates a museum in The Old Courthouse in Bloomington. The applicant leases the courthouse from the county of McLean. (Dept. Ex. No. 2; Tr. p. 24, 26-27)

7. The purpose clause of the applicant's constitution states that:

The purpose of this Society shall be in harmony with its Articles of Incorporation, i.e., to discover, collect, and preserve objects, documents and/or information relating to McLean County, Illinois' history, in accordance with such policies as shall be adopted by the Board of

Directors, and to disseminate knowledge of the above to the public by the maintenance of museums and libraries, and through publication, and meetings. (Dept. Ex. No. 2 p. 18)

8. The constitution of the applicant states that all persons who express an interest in supporting applicant's purpose are entitled to membership. Honorary memberships, without dues, are extended annually to the members of the county board and others selected by the Directors of the society. The applicant has no provision for a waiver of dues if a person is unable to pay. A person may not join the society without paying dues. (Dept. Ex. No. 2 p. 18; Tr. p. 61)

9. McLean County Parcel Index No. (43) 21-03-403-007 is commonly known as 1316 E. Washington Street, Bloomington, Illinois. It contains a two-story 1800 square foot residence that was the boyhood home of Adlai E. Stevenson II. Elizabeth Stevenson Ives, the sister of Stevenson, conveyed the property to the applicant. Adlai E. Stevenson II was the Governor of the State of Illinois from 1949 to 1953, Democratic candidate for President of the United States, and ambassador to the United Nations under Presidents John F. Kennedy and Lyndon B. Johnson. (Dept. Ex. No. 2 pp.1-5; Tr. p. 20)

10. The house is located in a well-established residential neighborhood of single-family homes. It has a shared driveway with the residence to the East. Parking is a problem in the neighborhood. (Dept. Ex. No. 2 p. 27; Applicant's Ex. Nos. 6,7)

11. The applicant was granted an interest in the subject parcel by a quitclaim deed dated November 2, 1977. The deed was not recorded. The conveyance was subject to the reservation of a life estate in the grantor, Elizabeth Stevenson Ives. (Dept. Ex. No. 2 p. 5; Tr. p. 19)

12. On November 2, 1977, in conjunction with the execution of the quitclaim deed, the applicant and Mrs. Ives entered into an agreement. The agreement reiterated the fact that Mrs. Ives retained a life estate in the property and retained all rights to the contents, furnishings, furniture, and equipment in the house. The agreement stated that the applicant agreed to maintain the property in a good state of repair at the death of Mrs. Ives or the waiver of her life estate. The applicant interpreted the agreement to reserve the right to determine if it was in its

best interest to accept the responsibility for the preservation of the property at the death of Mrs. Ives. (Applicant's Ex. Nos. 10, 11; Dept. Ex. 2. p. 24; Tr. pp. 27-28)

13. Simultaneously with the execution of the agreement, an advisory committee was formed to ascertain that the property was being used in conformity with the provisions of the agreement. If the committee determined that the terms of the agreement were not being met, the house was to be torn down and the lot used as a public park with a marker identifying it as the site of the home of the members of the Stevenson-Ives family. The advisory committee meets annually on the property. (Applicant's Ex. Nos. 10, 11; Dept. Ex. 2. p. 24; Tr. pp. 57-59)

14. The agreement also obligated the applicant to pay any and all taxes levied against the property subsequent to the death of Mrs. Ives or the waiver of her life-estate. It is unclear who signed the agreement for the applicant and in what representative capacity. The agreement obligated Mrs. Ives to provide by her last will and testament a bequest of \$10,000.00 (ten thousand dollars) to be invested by the named trustee bank, the Peoples Bank of Bloomington, the net income of which was to be paid to the applicant as long as the applicant was in possession of the real estate. (Applicant's Ex. No. 10)

15. In between the time when the applicant accepted the property and the death of Mrs. Ives, the applicant was offered the opportunity to lease, restore, and develop "The Old Courthouse Museum." This meant that the applicant had to prioritize its activities and analyze what would most benefit the applicant's purpose and the public. The applicant raised \$2,000,000.00 to convert the courthouse to a museum. (Tr. pp. 26, 30)

16. The house on the parcel in question contains many artifacts that represent several generations of collecting and occupancy. The applicant considers the house to be a large artifact that contains other smaller artifacts. (Applicant's Ex. No. 6; Tr. pp. 21, 28, 68, 79)

17. Mrs. Ives died in 1993 or 1994. (Dept. Ex. No. 2 p. 46; Applicant's Ex. Nos. 5 p. iv, 9; Tr. pp. 20, 27)

18. In the fall of 1995, the applicant had an historic preservation architect prepare a condition assessment of the residence on the subject property. The assessment included the

Secretary of the Interior's standards for Rehabilitation. The conclusion of the assessment was that the residence was generally in very good condition. The recommendation was that prior to attempting rehabilitation of the structure, the applicant would need to develop a comprehensive plan that integrates the building's new program and function with the "capital program". The "capital program" is assumed to be the comprehensive total rehabilitation program. (Applicant's Ex. No. 5; Tr. p. 28-29, 65-66)

19. On June 19, 1996, at the board meeting of the applicant, a motion was made and seconded for adoption of the resolution for acceptance of the Stevenson house. The floor was opened for discussion, which was extensive and addressed the perception that the community would have of the applicant if they backed out of the commitment or did not make an effort to preserve the house. A further motion was made to modify the original motion of resolution to "assumes possession of the house" rather than acceptance of the house. The motion was carried by majority vote. (Applicant's Ex. No. 4; Tr. pp. 71-74)

20. A committee was formed to investigate the possible uses of the house on the subject parcel. The committee found that the idea to use the house as a bed and breakfast facility was not feasible. Nor would a partnership with the National Trust for Historical Preservation (hereinafter the "Trust") be possible because the house did not meet the standards of elegance set by the trust in its determinations when taking on property. Another option addressed was a partnership with the Illinois Historical Preservation Agency. This option was also rejected because the agency director found that the "site did not lend itself to a[n] active historic house museum." The only viable option that the committee found was a partnership with the Landmarks Preservation Council of Illinois to establish a downstate historic preservation center at the house. This option subsequently became unavailable. (Applicant's Ex. No. 7; Tr. pp. 30-33)

21. Another team that was involved in an historical analysis of the home located on the subject parcel, reported that the house is important because it was the childhood home of Adlai Stevenson II, was the work of a well known architect Arthur Pillsbury, and reflects the

lifestyle of a politically prominent family and places the family within a larger social and cultural context. The group questioned the advisability of devoting the house to public visitation and found that the endowment in the bequest of Mrs. Ives could not fund the restoration, staffing, and maintenance of a second museum in the area. (Applicant's Ex. No. 6)

22. The historical analysis team also suggested adapting the structure to include multiple utilization such as office/conference/archival uses in addition to museum services. The team reported that the house had potential as a multiple-use facility, after further study and adaptation is done. There is a problem regarding handicap accessibility, parking, and the shared driveway. (Applicant's Ex. No. 6; Tr. pp. 48-52)

23. The house is available for meetings. Because of concerns for proper preservation, the ways in which the house is used must be controlled. The house is located in a residential district, which is not adaptable to heavy or continuing use of the house by the public. The applicant has a "Stevenson House Use Agreement" form for occasions that are Non-Historical Society Functions. There is no fee charged for the use of the house. (Dept. Ex. No 2 p. 27; Tr. p. 62)

24. The executive director of the applicant is responsible for the day-to-day business of the applicant. He supervises a staff of 12 employees and 150 volunteers. In March 1998, he also became the site manager on the subject property. At the time of the hearing, the house also served as the private residence of the director of the applicant and his wife. Guests of the house are requested to respect the house as a private residence. (Tr. pp. 18, 61-62)

25. The applicant and the director executed the site manager's agreement on March 1, 1998, to memorialize the fact that the applicant is responsible for the care and preservation of properties but has limited resources with which to fulfill this goal. Insurance concerns require that the house either be physically occupied or else a severe penalty will be imposed for insurance coverage. The site-manager agreement is for three years with a two-year extension. The site manager is responsible for overseeing the appearance and maintenance of the house. The site manager is responsible for the payment of ½ of the water, gas, and electric bills. The

applicant is responsible for payment of 100% of the cost and operation of a security system and cleaning of public areas 12 times per year. The site manager is responsible for telephone, internet, and cable television charges. The agreement states that the house is open for the benefit of the applicant by the site manager no more than six times a year. Any use of the premises by the applicant is restricted to the public rooms and grounds. The site manager has the exclusive possession, during the terms of the agreement, to the rooms on the second floor of the premises. (Applicant's Ex. No. 1; Tr. pp. 44-46)

26. During the first half of 1996, the taxable year in question, the house was primarily used for storage of the household goods that the Ives family intended to leave with the home. During that time, the applicant sought advice of experts and showed the house to the experts and public agencies that might have an interest in preserving it. During the second half of 1996, the applicant inventoried the contents of the house and packed them for storage while heating and ventilation contractors installed a new heating system for use in the home during the winter. (Dept. Ex. No. 2 pp. 24-25; Tr. pp. 34-35, 62)

27. The applicant submitted an unexecuted resolution with the property tax exemption application in which it was stated that the family of Mrs. Ives has agreed to contribute \$65,000.00 towards the restoration and stabilization of the physical structure on the parcel in question. (Dept. Ex. No 2 pp. 15-17; Applicant's Ex. Nos. 3, 12)

28. According to the minutes of the applicant's board meeting of December 16, 1997, the committee report on the Stevenson house included the information that Mrs. Ives left an endowment of \$150,000.00. That amount was not included in the \$20,000.00 needed for completion of the "project." The total cost of the "project" is about \$70,000.00. It is assumed by the administrative law judge that the "project" is the initial restoration stages necessary to stabilize the house. (Applicant's Ex. No. 2)

29. Mrs. Ives' son, Timothy Ives, has donated \$65,000.00 to the applicant for initial renovation of the house on the subject parcel. In 1998, the applicant conducted a fund raising drive by contacting 15 Stevenson heirs and challenging them to become a part of the restoration

project for the home. The applicant continues to try to raise funds for the project. (Applicant's Ex. No. 9; Tr. p. 34-43, 59)

30. The applicant is currently continuing the restoration work on the house as funds permit. Only ½ of the first phase of the restoration project is completed. Documentation is an on-going project. The executive director/site manager anticipates that the entire project will cost about \$1,200,000.00 to \$1,500,00.00 to complete. The Board of Directors decided not to commingle the funds of the applicant with Stevenson House funds. The applicant did not have the necessary \$1,200,000.00 to upgrade the facility at the time of the hearing. (Dept. Ex. No.2 pp. 46-47; Tr. pp. 38-46, 50, 66-67, 73-74)

31. Once the applicant makes the interior of the house available to the public, it has been recommended by an employee of the City of Bloomington that the applicant file for an S-4 Historical Cultural Zoning permit in order to allow the public to comment on the change in use of the residence. (Tr. p. 55-57)

32. The Department, pursuant to letters dated February 8, 1991, and January 26, 1996, has granted the applicant an exemption from Retailers' Occupation Taxes and related taxes. (Dept. Ex. No. 2 pp. 8-9)

33. The applicant is exempt from the payment of federal income taxes pursuant to a 501(c)(3) designation verified by the Internal Revenue Service in an advisory letter issued on March 19, 1990. (Dept. Ex. No. 2 p. 10)

34. The applicant was registered with the office of the Attorney General of the state of Illinois under "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes" and the Illinois Charitable Trust Act on June 15, 1976. The applicant was assigned registration number CO-8561. (Dept. Ex. No. 2 p. 13)

35. The applicant is accredited by the American Association of Museums. The accreditation mandates national standards the applicant must meet. (Applicant's Ex. No. 8; Tr. p. 35-37, 76-80)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;. . .
- (b) beneficent and charitable organizations incorporated in any state of the United States,....

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter referred to as "Methodist Old Peoples Home") They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all

"institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old Peoples Home at 157

This applicant's primary obstacle to exemption under the above criteria is that they do not dispense charity to all who need and apply for it. The applicant also does not qualify under the above-cited criteria because they appear to place obstacles in the way of needy persons that cannot afford the membership fees. The applicant herein does not have a waiver of fees in its by laws, and membership in the applicant is restricted to those who pay the membership fee. While the applicant stated that the membership did not grant any privileges to its members, that is not what the statutes and case law require. I therefore find that the applicant is not a charitable organization.

Regarding the use of the subject parcel, I find that the applicant's use of the home on the subject parcel is also not charitable. During the period of 1996 that the applicant resolved to assume possession of the house, it boxed up the artifacts that it received with the acquisition of the home in preparation for replacement of the heating system. The applicant basically did not use the property, and certainly not for an exempt purpose, in 1996.

The Appellate Court of Illinois has determined that property owned by a church and used for storage of church records and furniture qualified for a property tax exemption in Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App. 3d 1055 (5th Dist. 1990), leave to appeal denied. That storage of the items was in conjunction with the religious use of applicant's

church. Here, the use of the property was not charitable. The property, in fact, was not used as a museum or anything else that might have qualified for an exemption in 1996.

The courts have also held that vacant property does not qualify for a property tax exemption. The Illinois Appellate Court found that a church owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983)

By the time of the hearing, the property was primarily used as a residence for the applicant's director. Residences do not normally qualify for a property tax exemption. Girl Scouts of Du Page County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (2nd Dist. 1988); Lutheran Child and Family Services of Illinois, 160 Ill.App.3d 420 (2nd Dist. 1987); Clark v. Marian Park, Inc., 80 Ill.App.3d 1010 (2nd Dist. 1980) In order for a residence to qualify for a property tax exemption, a two-part test was established in McMurray College v. Wright, 38 Ill.2d 272 (1967). The test was were the residents of the houses required to live in their residences because of their exempt duties for the college, or were they required to, or did they perform any of their exempt duties there? In Girl Scouts of Du Page County Council, Inc. v. Department of Revenue, cited above, the court determined, based on facts that are essentially the same as those here in issue, that said residences did not qualify for exemption.

Just because an applicant intends to use a parcel for a purpose that might qualify for an exemption, the courts have stated that those properties intended to be used for an exempt purpose, but not actually adapted for it, do not qualify for exemption. Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988) leave to appeal denied.

The Illinois Courts have also held that property that is being adapted for an exempt purpose may qualify for a property tax exemption during the adaptation time. In the case of Weslin Properties, Inc. v. Department, 157 Ill.App.3d 580 (2nd Dist. 1987), the Appellate Court held that property which was under development and adaptation for exempt use, qualified for exemption. In that case, Weslin Properties purchased a 24.3-acre tract on May 26, 1983, to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983, the parent corporation of Weslin Properties approved a site plan and hired an architect. Then in 1984, construction of the Urgent Care facility began. In 1985, the Urgent Care Center was completed and occupied. The Court held that the Urgent Care facility qualified for exemption during 1983, but that the remainder of the parcel did not qualify, as there had not been sufficient adaptation and development for use of the remainder of said parcel during 1983. The Court in Weslin noted that the parcel there in issue was to be used as a medical campus, which was a complex and costly undertaking, requiring several years to be completed. The court stressed the fact that the applicant had a comprehensive and detailed plan that the applicant adhered to during the taxable year in question.

The relatively simple task of inventorying the artifacts contained within the home here in issue does not compare favorably to the multi-million dollar construction necessary for the hospital and related medical complex as shown in Weslin. The facts in Weslin are clearly distinguishable from this case.

The Stevenson Home needs to be renovated and restored and the interior possibly set up with displays of artifacts. During the taxable year in question, the applicant replaced the heating system and boxed up artifacts. Within the next two years, up to the time of the hearing, the applicant had not formulated a comprehensive plan as to what exactly would be done with the

property. At the time of the hearing, the applicant was still inventorying the artifacts contained within the home. The applicant did not have the necessary \$1,200,000 to \$1,500,000 to accomplish the proposal of the executive director as to the use of the home.

The attorney for the applicant in its brief correctly cites Methodist Old Peoples Home and the stated criteria for guidelines as to what is charitable use. The attorney then goes on to cite Decatur Sports Foundation v. The Department of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988) for the proposition that the Methodist Old Peoples Home guidelines should be used to determine the facts of this case. I have used those guidelines.

Under the criteria of Decatur Sports, I find that the applicant also does not qualify for a property tax exemption. The court held in Decatur Sports that the term “exclusively used” meant primary use. The primary use of the subject parcel in Decatur Sports was as a 40-acre sports complex. The applicant did not use the property here in question for recreational purposes or related uses. In that regard, I find that the applicant’s reliance on Decatur Sports is misplaced. Also, the applicant has not established that they lessen a governmental burden, an additional guideline to be relied upon in determining if an applicant is a charitable organization or that its use of a parcel is charitable according to Decatur Sports.

The other case that the applicant cites in its brief is Vermilion County Museum Society v. The Department of Revenue, 273 Ill.App.3d 675 (4th Dist. 1995, Justice McCullough dissenting). Vermilion County Museum Society is a case about a parking lot adjacent to the Fithian House, a museum operated by the Vermilion County Museum Society. The court held that the parking lot qualified for an exemption after finding that the society was a charitable organization and that the museum was used in a charitable manner.

The applicant herein operates a museum, but it is not on the property that was the subject

of the hearing and is the subject of this recommendation. I therefore find the applicant's operating standards on another piece of property are not relevant to the recommendation for McLean County Parcel Index No. (43) 21-03-403-007, the property at issue herein and the use thereof. To reiterate, the property herein question was not used as a museum during 1996. It was not used for charitable purposes in 1996. The applicant has not established that it is a charitable organization.

I therefore recommend that McLean County Parcel Index No. (43) 21-03-403-007 remain on the tax rolls for the 1996 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
January 14, 1999